

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT S. DAVIDSON, d/b/a PlasterTech,
Plaintiff,
v.
THE UNITED STATES,
Defendant.

13-942 C

Senior Judge Eric G. Bruggink

STIPULATED UNCONTESTED FACTS

Pursuant to Paragraph 13(c)(4) and Paragraph 17 of Appendix A of the Rules of the Court of Federal Claims, and the Court's Order dated January 24, 2017 (Dkt. No. 66), Plaintiff, Robert S. Davidson d/b/a PlasterTech, and Defendant, the United States, jointly submit their Stipulated Uncontested Facts.

AGREED UPON FACTS

1. Plaintiff Robert S. Davidson d/b/a PlasterTech ("Davidson") resides in Las Vegas, Nevada.
2. The United States Postal Service ("Postal Service") is "an independent establishment of the executive branch of the Government of the United States." 39 U.S.C. § 201.
3. The Statue of Liberty stands on Liberty Island in New York Harbor. It was designed by French sculptor Frederic-Auguste Bartholdi, with assistance from engineer Alexandre-Gustave Eiffel, and was dedicated on October 28, 1886.
4. The Statue of Liberty is a well-known icon of the United States. The Statue of Liberty is in the public domain.

5. In 1994, Primadonna Resorts, Inc. and MGM Grand, Inc. formed a joint venture to create a New York City-themed hotel-casino on the corner of Tropicana Avenue and Las Vegas Boulevard in Las Vegas, Nevada – a location on the Las Vegas Strip.

6. The concept called for the exterior of the hotel-casino to resemble the New York City skyline, complete with recreations of famous buildings and landmarks, including the Statue of Liberty. The hotel-casino was named the “New York-New York Hotel & Casino.”

7. In 1995, Marnell Corrao Associates (“Marnell”) was hired as the general contractor.

8. In 1995, Marnell hired Recreation Development Corporation (“RDC”) as a subcontractor to create the New York City skyline-inspired exterior of the New York-New York Hotel & Casino.

9. In or around July of 1995, Davidson was contacted by RDC concerning the sculpting of a statue (for the purpose of this stipulation, the “LV Statue”) that would be representative of the Statue of Liberty residing in New York Harbor.

10. On September 26, 1995, Davidson submitted a proposal to Jeff Whittle of RDC.

11. On October 26, 1995, RDC sent a letter formally accepting Davidson's proposal dated September 26, 1995. Prior to receiving this formal notice, Davidson had already received verbal approval from RDC to proceed with the project.

12. Davidson completed the LV Statue on October 4, 1996.

13. Davidson affixed a plaque to the crown of the LV Statue dedicating the statue to his recently deceased mother-in-law.

14. Davidson has not generated any licensing revenue for his copyright in the Statue.

15. In 2007, the Postal Service introduced the first Forever stamp, bearing an image of the Liberty Bell. A Forever stamp is a stamp that will always be equal in value to the current price for postage for a one-ounce, First-Class mail piece.

16. The Postal Service decided to introduce one or more stamp designs with a patriotic image to replace the Liberty Bell workhorse Forever stamp.

17. The Postal Service has issued more than 20 stamps featuring images and drawings of the Statue of Liberty.

18. On May 18, 2010, the Postal Service licensed an image by Raimund Linke from Getty Images depicting a portion of the LV Statue: primarily the face of the statue, as well as part of the statue's crown.

19. The Postal Service incorporated the image on to a stamp ("the Lady Liberty Stamp"). The Postal Service issue the Lady Liberty Stamp *se tenant* (paired) with a stamp featuring an image of a United States flag ("the U.S. Flag Stamp"). Both were Forever workhorse stamps.

20. On December 1, 2010, the Postal Service issued the Lady Liberty Stamp *se tenant* U.S. Flag Stamp for sale to the public.

21. The Postal Service did not obtain Davidson's authorization to depict the LV Statue on the Lady Liberty Stamp or for any other purpose.

22. On March 18, 2011, Sunipix, a stock photo agency, notified the Postal Service that the image on the Lady Liberty Stamp depicted the LV Statue, rather than the Statue of Liberty in New York City.

23. Davidson filed an application with the United States Copyright Office to register a copyright for “Las Vegas Lady Liberty.” The Copyright Office issued Registration No. VAu 1-090-876 with an effective date of registration of January 16, 2012.

24. Davidson filed an application with the United States Copyright Office to register a copyright for “Las Vegas Lady Liberty Statue” on behalf of “PlasterTech, a sole proprietorship of Robert Davidson.” The Copyright Office issued Registration No. VA 1-882-070 with an effective date of registration of November 15, 2013.

25. The Postal Service discontinued sales of and retired the Lady Liberty Stamp and U.S. Flag Stamp pair in January 2014.

26. The number of Lady Liberty Stamps sold, per year, were:

Year	Quantity
2010	92,273,370
2011	3,044,223,258
2012	1,791,350,576
2013	21,515,963
2014	90,586
Refunds	(692,587)
Total Sales	4,948,761,166

27. The same number of U.S. Flag Stamps were sold, per year, as the number of Lady Liberty Stamps noted above.

28. As of December 31, 2015, the Postal Service had collected \$2,190,414,155 from the sale of 4,948,761,166 Lady Liberty Stamps.

29. The estimated breakage rate (a calculation of stamps that will not be redeemed for services) for all workhorse stamps, including the Lady Liberty Stamp and U.S. Flag Stamp workhorse stamps, is 3.24%.

30. On November 27, 2013, Davidson filed suit in this Court pursuant to 28 U.S.C. § 1498(b) against the Postal Service.

Dated: August 14, 2017

Respectfully submitted by:

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August 14, 2017

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